

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:09-CR-157
)	(PHILLIPS/SHIRLEY)
BRIAN TWEED,)	
)	
Defendant.)	
)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is now before the Court on the Defendant's Motion to Continue Trial [Doc. 15], filed on January 28, 2010. The parties appeared before the undersigned on February 3, 2010 for a hearing on the motion. Assistant United States Attorney Kelly Norris was present on behalf of the Government. Attorney Jonathan Moffatt appeared on behalf of the Defendant, who was also present.

The Defendant seeks a trial continuance in this case because defense counsel cannot be fully prepared for trial on February 17, 2010, despite his exercise of due diligence. The Defendant represents that resolution of this case without trial is possible if he is allowed more time to engage in plea negotiation with the Government. The Government does not oppose the Defendant's motion, and it also represents that there is potential to resolve this case without the need for trial. The parties

have agreed on a new trial date of April 21, 2010, and a new plea negotiation deadline of April 8, 2010. The parties have also agreed that all time between the February 3, 2010, motion hearing and the new trial date of April 21, 2010, should be fully excludable time under the Speedy Trial Act.

At the February 3 hearing, defense counsel stated that the Defendant was aware of and understood his speedy trial rights. Defense counsel also stated that he had discussed the need for a trial continuance with the Defendant, and that the Defendant wanted the trial to be continued. The Defendant himself stated that he wanted the trial to be continued, and that he understood that he would remain in custody pending the new trial date.

Based upon the representations of the parties, the Court finds that there is good cause to continue both the plea negotiation deadline and the trial date in this case. Accordingly, the Defendant's Motion to Continue Trial [**Doc. 15**] is **GRANTED**, and the trial of this matter before the Honorable Thomas W. Phillips, United States District Judge, is **CONTINUED** to **April 21, 2010**.

The Court also finds that the ends of justice served by continuing the trial outweigh the best interest of the Defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A). Attorney Moffatt and the Defendant need adequate time to engage in plea negotiations with the Government, and to prepare for trial should those negotiations prove unsuccessful. The Court finds that all of this could not take place before February 17, 2010, or in less than two months. Thus, without a trial continuance, counsel for the Defendant would not have the reasonable time necessary to prepare for trial despite his use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv). The Court therefore finds that all time between the February 3, 2010, motion hearing and the new trial date of April 21, 2010, is fully excludable time under the Speedy Trial Act. See 18 U.S.C. § 3161(h)(7)(A)-(B).

With regard to other scheduling in this case, the Court **ORDERS** that the plea negotiation deadline is extended to **April 8, 2010**; all motions *in limine* must be filed by **April 6, 2010**; and any special requests for jury instructions must be submitted to the District Court by **April 9, 2010**. Special requests for jury instructions must be supported by citations of authority pursuant to Local Rule 7.4.

It is **ORDERED**:

- (1) The Defendant's Motion to Continue Trial [**Doc. 15**] is **GRANTED**;
- (2) The trial of this matter is reset to commence on **April 21, 2010**, before the Honorable Thomas W. Phillips, United States District Judge;
- (3) All time between the motion hearing on **February 3, 2010**, and the new trial date of **April 21, 2010**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;
- (4) The plea negotiation deadline in this case is extended to **April 8, 2010**;
- (5) All motions *in limine* must be filed no later than **April 6, 2010**; and
- (6) Special requests for jury instructions must be accompanied by appropriate citations to authority and must be submitted to the District Court no later than **April 9, 2010**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge